

SEP 18 2003

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Reinhart Boerner Van Deuren s.c.

By:

Rodney D. DeKruif

Date: September 18, 2003

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

GROUP ART UNIT: 1653

EXAMINER: SCHNIZER, HOLLY G.

In re application of: Barron, et al.)

Application No: 09/788,308)

Filed: 02/16/2001)

Attorney Docket No.: 6374)

Customer No. 22922)

For: POLYPEPTIDE PULMONARY
SURFACANTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

September 18, 2003

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

Responsive to the Restriction Requirement dated August 18, 2003, Applicants hereby elect Examiner's Group I (claims 1-17 and 28-31), for examination on the merits. Such election, however, is with traverse: all claims 1-31 should be examined at this time, inasmuch as the statutory requirements of 35 USC §121 are not met. The claims of Groups I, II and III do not present independent and distinct inventions.

The methods recited in the claims of Groups II and III are related, one to the other, and can be used together. For instance, enhanced solubility and confirmational control (Group II) can be achieved concomittantly to effect alveolar surface activity (Group III). Support for such conjunctive use is found throughout the specification and, in particular, in the results of Example 4, at pages 23-24.

Aspects relating to the pulmonary surfactant compositions of Group I (N-substituted glycine, etc.) are recited in the methods of Groups II and III. Neither

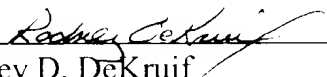
method can be practiced with another materially different composition, and the methods are materially related--as shown above. The subject matter is so closely related that a search for Applicants' surfactant compositions would necessarily encompass a search for the recited methods.

Even so, if the inventions are considered independent, there is no evidence that a search and examination directed to all claims would be a *serious burden* on the examiner, as required by MPEP section 803. ("If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions").

Because the search and examination of the entire application can be made without serious burden on examiner, it would be wasteful of the time, effort and resources of both Applicants and the Patent Office to prosecute the method and compositional claims in separate applications. Search and examination of all claim groups, in a single application, would be much more efficient than separate prosecution through multiple divisional applications.

Accordingly, it is submitted that all claims should be examined at this time, in a single application. The statutory threshold of independent and distinct inventions is not met. Reconsideration and withdrawal of the restriction requirement are respectfully requested. Consistent therewith, action on the merits of all claims is, likewise, appropriate. Thank you for your consideration.

Respectfully submitted,

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